

**SUMMARY REPORT OF INVESTIGATION**  
**Office of Inspector General Case # 15-0564**  
**(Deputy Chief David McNaughton)**  
**July 29, 2016**

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This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

**I. INTRODUCTION**

An OIG investigation established that David McNaughton, a Chicago Police Department (CPD) Deputy Chief who was the On-Call Incident Commander (OCIC) for the October 20, 2014 Laquan McDonald shooting, violated CPD Rules and Regulations when he approved false Tactical Response Reports (TRRs) and false Officer's Battery Reports (OBRs) submitted by Officers Jason Van Dyke, Joseph Walsh, and Thomas Gaffney regarding the shooting. In addition, McNaughton falsely reported in Van Dyke's TRR that McDonald "continued to approach" Van Dyke—then checked the box in Van Dyke's TRR that states, "I have concluded that the member's actions were in compliance with department procedures and directives," and failed to mark the box stating that further investigation was required. Finally, McNaughton provided a false statement to CPD's Office of News Affairs when he revised a CPD preliminary statement to say McDonald "continued to approach" Officers Van Dyke and Walsh. McNaughton's creation and endorsement of false statements, despite objective evidence to the contrary, all served to establish a false narrative that McDonald initiated an attack on Officers Walsh and Van Dyke. McNaughton, as a CPD supervisory member, was accountable for the actions of his subordinates, and his failure to be a neutral, objective arbiter when evaluating a police-involved shooting brought discredit to the Department. Accordingly, OIG recommends that CPD discharge McNaughton and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

**II. APPLICABLE RULES, REGULATIONS, AND LAW**

**A. CPD Rules and Regulations**

The "Rules and Regulations of the Chicago Police Department" set out the standards of conduct and duties of sworn members, including supervisory members, as well as CPD goals. The Rules and Regulations state that sworn members must "conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement." Supervisory members "have the responsibility for the performance of all subordinates placed under them" and they "[r]emain accountable for the failure, misconduct or omission by their subordinates."

Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

**Rule 2** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

**Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

**Rule 11** Incompetency or inefficiency in the performance of duty.

**Rule 14** Making a false report, written or oral.

**B. CPD General Order G03-02-05 (effective October 1, 2002 through October 29, 2014)**

CPD General Orders “are directives that establish critical policies directly related to the core values and functions of the Department or the broad organizational policies and key practices relating to those core values.” General Order G03-02-05 “identifies incidents which will require the completion of a Tactical Response Report.” It states that a TRR is used to document, among other things, all incidents “involving the discharge . . . of a firearm,” or “which involve a subject fitting the definition of an assailant whose actions are directed against a Department member.” Section II.C. states, “If the most serious use of force requires an investigation by an On-Call Incident Commander (OCIC), then the findings of all Tactical Response Reports resulting from the use of force by any member in that instance will be the responsibility of that OCIC.”

**C. CPD Special Order S03-02-01 (effective October 1, 2002 through October 29, 2014)**

CPD Special Orders are directives that establish protocols and procedures concerning specific CPD functions, operations, programs, or processes. Special Order S03-02-01 outlines CPD “investigative and reporting procedures in firearm discharge incidents.” Section VIII, listing the “On-Call Incident Commander Responsibilities,” states that one of the OCIC’s responsibilities is to “personally conduct an investigation into the circumstances surrounding the incident and make a preliminary determination as to whether the conduct of the member conformed to Department guidelines.” The OCIC must also “review all TRR(s) for legibility and completeness.”

**III. DEPUTY CHIEF MCNAUGHTON EMPLOYMENT HISTORY**

McNaughton has been a CPD member since December 16, 1991. On October 20, 2014, he was a Deputy Chief in the Patrol Bureau, assigned to Area Central. In December 2015, McNaughton was named the Deputy Chief of the Bureau of Support Services.

## IV. SUMMARY OF INVESTIGATION

### A. Procedural History of OIG's Investigation

By letter, dated December 8, 2015, IPRA Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation "to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke's shooting of McDonald] and/or during the investigation of the incident."<sup>1</sup> IPRA further requested that OIG investigate "whether any of the involved Chicago Police officers committed any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers' conduct may have interfered with or obstructed the appropriate investigation and handling of this matter."

Then, by letter, dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an "administrative investigation into any and all allegations of police officer misconduct" arising out of the October 20, 2014 shooting death of McDonald. The Superintendent's request asked OIG to investigate the following allegations: "whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter." Escalante attached to the letter request a copy of Sergeant Sandra Soria's Initiation Report, which raises allegations of misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG's administrative investigation.

On March 10, 2016, Kevin Kilmer (Star # 7518), Financial Secretary for the FOP, on behalf of all affected members, filed a grievance with CPD stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.<sup>2</sup> On March 16, 2016, FOP on behalf of all impacted CPD officers filed a "Complaint for Injunction in Aid of Arbitration" in the Circuit Court of Cook County asking the court to enjoin

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<sup>1</sup> On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

<sup>2</sup> Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

OIG from conducting interviews until the grievance was decided in arbitration.<sup>3</sup> The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG's administrative investigation of other CPD employees' actions related to the McDonald shooting is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of CPD personnel who were at or responded to the scene of the shooting and civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel.

## B. The Events of October 20, 2014

The following sections detail Van Dyke's shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.<sup>4</sup>

### 1. [REDACTED] and Rudy Barillas's Encounter with McDonald<sup>5</sup>

[REDACTED] and [REDACTED] Rudy Barillas, were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, whom she subsequently identified as McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who had already called 911, then threw his cell phone at McDonald.<sup>6</sup> McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

### 2. Officers Thomas Gaffney and Joseph McElligott's Encounter with McDonald<sup>7</sup>

Officer Thomas Gaffney and his partner Officer Joseph McElligott received a call over the radio

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<sup>3</sup> *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

<sup>4</sup> On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

<sup>5</sup> The following account of [REDACTED] and Barillas's encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014, respectively. OIG 15-0564 003077.

<sup>6</sup> OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding "a guy right hear [sic] that stolen [sic] the radios" from trucks in a truck yard located at "41st and Kildare." OIG 15-0564 003227.

<sup>7</sup> The following account of Gaffney and McElligott's encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 000482-98, 000610-30, 003067-69.

that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.<sup>8</sup> Gaffney was driving and McElligott was in the passenger seat of their assigned vehicle, 815R.<sup>9</sup> When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck, and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife. McDonald started walking east again, going from the sidewalk to the street and back. McElligott followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.<sup>10</sup> Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.<sup>11</sup>

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<sup>8</sup> OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

<sup>9</sup> Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

Beat #	Vehicle #	Officers
845R	6412	Officer Joseph Walsh (driver), Officer Van Dyke (passenger)
815R	8489	Officer Gaffney (driver), Officer McElligott (passenger and on foot)
813R	8779	Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger)
822R	8765	Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)
841R	8948	Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger)

<sup>10</sup> OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; see also OIG 15-0564 003691, 3228.

<sup>11</sup> OIG 15-0564 000620.

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R's right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R's windshield once with the knife in his right hand. The windshield did not break but, according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran eastbound through a parking lot of a Burger King located at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald's movements as he reached Pulaski.

### 3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R, 823R, and 845R, video from the "WNE fire exit" security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin' Donuts, located at 4113 South Pulaski Road (the DD Camera).<sup>12</sup>

Time	Event(s) Captured	Source of Video
9:53:17 – 9:54:42	McDonald walks eastbound on the south side sidewalk of 40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with McDonald; an officer on foot trails directly behind McDonald by the length of the SUV, with his flashlight trained on McDonald. <sup>13</sup>	Greater Chicago Food Depository Security Camera
9:56:53 – 9:57:01	813R and 845R turn left onto 40th Street from Pulaski.	813R Dashcam
9:57:01– 9:57:09	An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R);	813R Dashcam; 845R Dashcam

<sup>12</sup> In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 821R and 815R. These videos did not contain footage relevant to this report.

<sup>13</sup> OIG confirmed the vehicle is 815R and the officer on foot is McElligott by comparing the video with photographs of the officers. OIG 15-0564 003356.

	845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).	
9:57:09 – 9:57:20	845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).	813R Dashcam; 845R Dashcam
9:57:20 – 9:57:25	845R, which is facing east/southeast on Pulaski just north of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822R, which is stopped in the middle of Pulaski facing north.	813R Dashcam
9:57:25 – 9:57:28	McDonald slows as he approaches 822R, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R and with 822R situated between McDonald and the officers, McDonald extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822R and comes to a stop on the east side of Pulaski, facing south and almost directly south of 822R; Van Dyke opens 845R's passenger door.	813R Dashcam
9:57:28 – 9:57:30	McDonald changes course and begins walking southwest on Pulaski, away from 822R and 845R (813R); Van Dyke exits the passenger side of 845R with both of his feet in Pulaski's northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski's northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).	813R Dashcam; DD Camera <sup>14</sup>
9:57:30 – 9:57:33	McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of	813R Dashcam; DD Camera

<sup>14</sup> The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R's video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

	<p>the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski's northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski's yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822R drives north on Pulaski, away from 845R (813R). 841R drives north in the middle of Pulaski, toward 845R and stops just south of 845R, facing north (813R; DD Camera).</p>	
9:57:33 – 9:57:36	<p>As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left, and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski's northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski's median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is then apparently shot, and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera).</p>	813R Dashcam; DD Camera
9:57:36 – 9:57:54	<p>McDonald spins between 180 and 270 degrees in a clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski—his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald (DD Camera). Other than those steps, Van Dyke's feet are</p>	813R Dashcam; DD Camera

	stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). <sup>15</sup>	
9:57:54 – 9:58:05	An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.	813R Dashcam
9:58:05- 9:58:20	McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the west side of Pulaski, and stops just south of where McDonald is lying.	813R Dashcam; 823R Dashcam
9:58:20- 9:58:57	Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.	813R Dashcam; <sup>16</sup> 823R Dashcam
9:58:57- 9:59:02	823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. <sup>17</sup> McDonald is no longer visible in the video frame.	823R Dashcam

#### 4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting<sup>18</sup>

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

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<sup>15</sup> OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

<sup>16</sup> The last time stamp visible on the 813R dashcam video is 9:58:55.

<sup>17</sup> OIG identified the CCSPD officer as Officer Adam Murphy.

<sup>18</sup> The following CCSPD Officer accounts are taken from OIG’s June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

I see there's blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route. Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.<sup>19</sup> It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That’s why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] to ‘call your union rep, call your union rep.’” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

### C. Documents Concerning the McDonald Shooting

#### 1. Tactical Response Reports (TRRs)

On October 21, 2014, at 4:44 a.m., Van Dyke submitted a TRR with the R.D. Number HX475653 and an Event Number of 1429315878, regarding his October 20, 2014 encounter with “Lequan [sic] McDonald.”<sup>20</sup> Under the heading titled “Assailant: Assault,” Van Dyke marked the box labeled “Imminent Threat of Battery.”<sup>21</sup> Under the heading titled “Assailant: Battery,” he marked the box labeled “Attack with Weapon.” Under the heading titled “Assailant: Deadly Force,” he marked the boxes labeled “Uses Force Likely to Cause Death or Great Bodily Harm” and “Weapon.” Van Dyke specified in the TRR that the “offender’s weapon was a knife in his hand.”

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<sup>19</sup> The Medical Examiner’s Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

<sup>20</sup> OIG 15-0564 003313-14.

<sup>21</sup> Pursuant to the Illinois Criminal Code, a person commits battery when he or she knowingly and without legal justification “(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 ILL. COMP. STAT. 5/12-3. A person commits assault when he or she, without lawful authority, “knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILL. COMP. STAT. 5/12-1.

38. <input type="checkbox"/> DNA	<b>SUBJECT'S ACTIONS</b> DID NOT FOLLOW VERBAL DIRECTION <input checked="" type="checkbox"/> STIFFENED (DEAD WEIGHT) <input type="checkbox"/> OTHER _____	<b>ACTIVE RESISTER</b> FLED <input type="checkbox"/> PULLED AWAY <input type="checkbox"/> OTHER _____	<b>ASSAILANT: ASSAULT</b> IMMINENT THREAT OF BATTERY <input checked="" type="checkbox"/> OTHER _____	<b>ASSAILANT: BATTERY</b> ATTACK WITH WEAPON <input checked="" type="checkbox"/> ATTACK WITHOUT WEAPON <input type="checkbox"/> OTHER _____	<b>ASSAILANT: DEADLY FORCE</b> USES FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM <input checked="" type="checkbox"/> WEAPON <input checked="" type="checkbox"/> OTHER _____				
REASON FOR USE OF FORCE (Check all that apply)	<b>MEMBER'S RESPONSE</b> MEMBER PRESENCE <input checked="" type="checkbox"/> VERBAL COMMANDS <input checked="" type="checkbox"/> ESCORT HOLOS <input type="checkbox"/> WRISTLOCK <input type="checkbox"/> ARMBAR <input type="checkbox"/> PRESSURE SENSITIVE AREAS <input type="checkbox"/> CONTROL INSTRUMENT <input type="checkbox"/> OC CHEMICAL WEAPON <input type="checkbox"/> UNAUTHORIZATION <input type="checkbox"/> OTHER _____					OPEN HAND STRIKE <input type="checkbox"/> TAKE DOWN / EMERGENCY HANDCUFFING <input type="checkbox"/> OC CHEMICAL WEAPON <input type="checkbox"/> CANINE <input type="checkbox"/> LASER (Probe Discharge) <input type="checkbox"/> LASER (Contact Stun) <input type="checkbox"/> LASER (Laser Targeted) <input type="checkbox"/> LASER (Spark Displayed) <input type="checkbox"/> OTHER _____	ELBOW STRIKE <input type="checkbox"/> CLOSED HAND STRIKE/PUNCH <input type="checkbox"/> IMPACT WEAPON (Describe in Box 40) <input type="checkbox"/> OTHER _____	KNEE STRIKE <input type="checkbox"/> KICKS <input type="checkbox"/> IMPACT MUNITION (Describe in Box 40) <input type="checkbox"/> OTHER _____	FIREARM <input checked="" type="checkbox"/> OTHER _____
39. <input type="checkbox"/> DNA	OC CHEMICAL WEAPON AUTHORIZED BY (NAME) POSITION _____ STAR NO. _____ UNIT _____			ADDITIONAL INFORMATION <b>OFFENDER'S WEAPON WAS A KNIFE IN HIS HAND.</b>					

The back of Van Dyke's TRR contains a section titled "76. Lieutenant or Above/OCIC Rationale for Box 77 Finding." In that section, McNaughton typed the following: "Based upon information available at the time of this report It [sic] is the preliminary determination of the undersigned that Officer Van Dyke fired his weapon in compliance with Department policy. Officer Van Dyke fired his weapon in fear of his life when the offender while armed with a knife continued to approach and refused all verbal direction."

Under "77. Lieutenant or Above/OCIC Finding Based Upon Currently Available Information," McNaughton checked the box labeled "I have concluded that the member's actions were in compliance with department procedures and directives." McNaughton did not mark the box labeled "I have concluded that further investigation is required." Under that box, there is a space for a "Log No./CR No," which states, "1072125."

<b>77. LIEUTENANT OR ABOVE/OCIC FINDING BASED UPON CURRENTLY AVAILABLE INFORMATION:</b>	
<input checked="" type="checkbox"/> I HAVE CONCLUDED THAT THE MEMBER'S ACTIONS WERE IN COMPLIANCE WITH DEPARTMENT PROCEDURES AND DIRECTIVES.	<input type="checkbox"/> I HAVE CONCLUDED THAT FURTHER INVESTIGATION IS REQUIRED.
LOG NO./CRNO. <u>1072125</u> OBTAINED	

McNaughton electronically signed Van Dyke's TRR on October 21, 2014, at 4:58 a.m. He noted that a "TRR packet" would be forwarded to IPRA.

Walsh and Gaffney also submitted TRRs on October 21, 2014, at 5:04 a.m. and 5:15 a.m., respectively.<sup>22</sup> Under the heading titled "Assailant: Assault," they each marked the box labeled "Imminent Threat of Battery." Under the heading titled "Assailant: Battery," they marked the box labeled "Attack with Weapon." Under the heading titled "Assailant: Deadly Force," they

<sup>22</sup> OIG 15-0564 003317-18, 21-22.

marked the boxes labeled “Uses Force Likely to Cause Death or Great Bodily Harm” and “Weapon.” Walsh and Gaffney both specified in the TRRs that McDonald was “armed with [a] knife.” McNaughton electronically signed Walsh’s TRR at 5:12 a.m. and Gaffney’s TRR at 5:20 a.m.

## 2. Officer’s Battery Reports (OBR)

The OBR form states that it is to be completed when “a sworn member is the victim of a murder, aggravated battery, battery, aggravated assault, or assault while performing a police function either on-duty or off-duty.”<sup>23</sup> Van Dyke, Walsh, and Gaffney completed and submitted OBRs with the R.D. Number HX475653 regarding their October 20, 2014 encounters with McDonald.<sup>24</sup> The OBRs are nearly identical. They all state three officers were “battered.”<sup>25</sup> Under the heading titled “Manner of Attack,” the officers each marked the box labeled “Stabbed/Cut (Including Actual Attempt).” Under the heading titled “Type of Weapon/Threat,” Van Dyke and Gaffney marked the boxes labeled “Knife/Other Cutting Instrument” and “Other/Specify.” Walsh only marked “Other/Specify.” All three officers specified the type of weapon/threat as a “Swinging Knife.” McNaughton electronically signed all three reports.

NO. OF OFFICERS BATTERED	<u>3</u>
WERE THERE ASSISTING UNITS ON SCENE?	1. <input checked="" type="checkbox"/> YES      2. <input type="checkbox"/> NO
IF YES HOW MANY ASSISTING OFFICERS WERE PRESENT AT TIME BATTERY (EXCLUDING YOU OR YOUR PARTNERS)?	<u>8</u>
<b>MANNER OF ATTACK</b>	
<input type="checkbox"/> 01. SHOT <input type="checkbox"/> 02. SHOT AT <input checked="" type="checkbox"/> 03. STABBED/CUT (INCLUDING ACTUAL ATTEMPT) <input type="checkbox"/> 04. STRUCK/BLEW FORCE (INCLUDING ACTUAL ATTEMPT) <input type="checkbox"/> 05. OTHER (INCLUDING VERBAL THREATS)	
<b>TYPE OF WEAPON/THREAT</b>	
(Check all that apply):	
<input type="checkbox"/> A. FIREARM CALIBER <input type="checkbox"/> D. HAND/FISTS <input type="checkbox"/> 1. REVOLVER <input type="checkbox"/> E. FEET <input type="checkbox"/> 2. SEMI-AUTOMATIC <input type="checkbox"/> F. MOUTH (SPIT, BITE, ETC.) <input type="checkbox"/> 3. RIFLE <input type="checkbox"/> G. VERBAL THREAT (ASSAULT) <input type="checkbox"/> 4. SHOTGUN <input checked="" type="checkbox"/> H. OTHER (SPECIFY) <u>SWINGING KNIFE</u>	
<input type="checkbox"/> B. VEHICLE <input type="checkbox"/> I. BLUNT INSTRUMENT <input type="checkbox"/> 1. OFFICER STRUCK WITH VEHICLE <input type="checkbox"/> 2. ATTEMPTED TO STRIKE OFFICER WITH VEHICLE	
<input checked="" type="checkbox"/> C. KNIFE/OTHER CUTTING INSTRUMENT <input type="checkbox"/> J. OTHER (SPECIFY)	
FIREARM USE INFORMATION	
(Check all that apply):	
<input type="checkbox"/> A. OFFICER AT GUNPOINT <input type="checkbox"/> B. OFFICER'S OWN WEAPON OBTAINED <input type="checkbox"/> C. ATTEMPTED TO OBTAIN OFFICER'S OWN WEAPON	

<sup>23</sup> See also Special Order S04-13-01, issued on December 28, 2012, which outlines the procedures to be followed for the preparation of an OBR.

<sup>24</sup> OIG 15-0564 003311–12, 15–16, 19–20.

<sup>25</sup> During his February 22, 2016 OIG interview, Walsh produced an OBR Summary from the CLEAR system, containing the same information as the October 21, 2014 OBR Walsh completed. It stated 3 officers were “Assaulted or Battered.” OIG 15-0564 006019–20.

3. October 21, 2014 Email between McNaughton and CPD's Office of News Affairs

On October 21, 2014, at 12:25 a.m., CPD's Office of News Affairs emailed McNaughton a "Preliminary Statement on Police Involved Shooting – 4100 Block of S. Pulaski."<sup>26</sup> It stated:

On Monday, October 20, 2014, at approximately 9:45 pm, officers assigned to the 008<sup>th</sup> District (Chicago Lawn) were on patrol in the vicinity of the 4100 block of S. Pulaski when they were responding to a call of holding an offender, when the officers arrived on scene they were met with the complaint [sic] who stated that an unknown subject was breaking into vehicles at that location. The officers approached the subject and announced their office. At which time the subject began to flee, a brief foot chase ensued. The offender produced a knife and proceeded to puncture the Chicago Police SUV tire, he then attempted to break out the driver side window of a responding unit. The officers ordered the offender to drop the knife. Refusing to comply with the officers' commands, the offender then turned towards the officers and began to approach. As a result of this action the officer discharged his weapon, striking the offender. The offender was transported to an area hospital where he succumbed to his injuries. No officers were injured during the incident.

This matter remains under investigation and all further media inquiries can be directed to the Independent Police Review Authority at 312-446-3298.

At 3:23 a.m., McNaughton responded with a revised statement:<sup>27</sup>

On Monday, October 20, 2014, at approximately 9:45 pm, officers assigned to the 008<sup>th</sup> District (Chicago Lawn) were investigating a 911 call of a subject who was breaking into vehicles in the vicinity of 41st and Karlov. Responding uniformed officers approached a subject who produced a knife and proceeded to puncture the front passenger tire and damage the front windshield of their marked Chicago Police vehicle. The offender fled with officers in pursuit. Near the intersection of 41st and Pulaski uniformed officers confronted the armed offender who refused to comply with orders to drop the knife and continued to approach the officers. As a result of this action the officer discharged his weapon, striking the offender. The offender was transported to an area hospital where he succumbed to his injuries. No officers were injured during the incident.

This matter remains under investigation and all further media inquiries can be directed to the Independent Police Review Authority at 312-446-3298.

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<sup>26</sup> OIG 15-0564 014051.

<sup>27</sup> OIG 15-0564 014050.

The official statement from CPD's Office of News Affairs was substantially similar to the statement McNaughton provided—it stated, in part: “Near the intersection of 4100 S. Pulaski, uniformed officers confronted the armed offender who refused to comply with orders to drop the knife and continued to approach the officers.”<sup>28</sup>

#### 4. IPRA Preliminary Statement from Walk-Through

IPRA Investigator Brian Killen drafted a memorandum with Log # 1072125 that included details of the McDonald shooting.<sup>29</sup> It lists the involved officers as Van Dyke, Gaffney, McElligott, Daphne Sebastian, Janet Mondragon, and Walsh. It notes that IPRA arrived to the shooting scene at 11:15 p.m. The memorandum contains a “Preliminary Statement From Walk-Through,” which states the following, in part:

The following information was provided by On-Scene Incident Commander Dave McNaughton during a walk-through of the scene, it is based upon multiple layers of hearsay and is not verbatim. At 0100 hours, OCIC Dave McNaughton conducted the walk-thru [sic].

. . .

Officer Walsh drove their vehicle south past McDonald and stopped in front of him in the northbound lanes of Pulaski Road. Officers Walsh and Van Dyke exited their vehicle with their weapons drawn and ordered McDonald to drop his knife. McDonald did not drop his knife, and instead walked toward Officer Van Dyke in an aggressive manner by waving the knife back and forth. Officer Van Dyke then discharged his firearm sixteen times, striking McDonald several times. McDonald fell to the ground still holding the knife.

The memorandum also states that McNaughton told the IPRA investigators that several of the police vehicles on the scene had in-car cameras and they were attempting to retrieve all recordings. It further states: “McNaughton noted that based on the position of the police vehicle driven by Officers Sebastian and Mondragon (Beat 813R) at the time of the incident, their in-car camera may have the best line-of-sight to the incident.”

#### D. OIG’s Interview of Deputy Chief McNaughton

On May 16, 2016, pursuant to CPD General Order 08-01, OIG, through CPD’s Bureau of Internal Affairs, served McNaughton with a Notification of Interview, Notification of Allegations, and copies of the TRRs and OBRS he reviewed and approved. In addition, OIG

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<sup>28</sup> OIG 15-0564 003852.

<sup>29</sup> OIG 15-0564 000029–33.

provided McNaughton with the dashcam footage from 813R and 845R and the security camera footage from Dunkin' Donuts.<sup>30</sup>

On May 25, 2016, OIG investigators interviewed McNaughton under oath after informing him of his administrative advisements orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. McNaughton's attorney, Thomas Pleines, was also present for the interview. In summary, McNaughton stated as follows.

McNaughton was a Deputy Chief of Patrol in Area Central on October 20, 2014. His direct supervisor was Wayne Gulliford, the Chief of Patrol. McNaughton learned of the McDonald shooting when he received a call from the Crime Prevention and Information Center (CPIC) while he was in bed informing him that he would be the OCIC for the shooting. McNaughton told the CPIC caller that he was not scheduled to be the OCIC that night and that another "exempt member" was assigned. McNaughton OIG Tr. 26:5. He noted in his OIG interview that he had just worked more than a full day on the motorcade detail escorting President Obama. CPIC called McNaughton again and said the other exempt member did not believe he was assigned, so McNaughton would have to go. McNaughton told the caller no again. He received a third call from Deputy Chief Eddie Johnson, who was serving as the Chief of Patrol while Gulliford was out. Johnson told McNaughton there was a mix-up and McNaughton would have to be the OCIC that evening. McNaughton stated a "considerable amount of time" passed between the first call from CPIC and the last call from Johnson. McNaughton OIG Tr. 27:4-5.

### 1. The Scene of the Shooting

McNaughton was unable to estimate how much time elapsed between the CPIC call and when he arrived at the scene, but he said there were many police officers present, and McDonald was no longer at the scene when he arrived. McNaughton believed the assigned detectives and IPRA personnel were already on the scene as well. As the OCIC, McNaughton's duties were to supervise and ensure everyone was "doing their job." McNaughton OIG Tr. 37:21. He was also responsible for doing a one-on-one interview with the shooting officer and walking IPRA through the scene. McNaughton believed the McDonald shooting was the second shooting he had handled as an OCIC.

McNaughton stressed that his description of the events at the scene may be off, but he would describe his actions as best as he could recall. McNaughton believed that, when he first arrived on scene, he spoke with 8th District Commander O'Donnell or Captain Walsh for a briefing. McNaughton then approached Van Dyke and introduced himself as the OCIC, explained his role, and told him he would return to ask Van Dyke some questions. McNaughton then recalled that one of the first things he did on scene was to view the video Sergeant Lance Becvar retrieved from Beat 813R's vehicle. McNaughton believed he viewed the video on Becvar's laptop in the vehicle. McNaughton stated: "Well, my initial reaction was, oh, my God, you know, this is, you

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<sup>30</sup> During his May 25, 2016 interview, McNaughton acknowledged that he reviewed those videos in preparation for his interview.

know, something to see, but I looked at it several times from the perspective of a police officer, and there were some very troubling things on that video that need to be notated and are not being notated in popular culture right now.” McNaughton OIG Tr. 44:8-14. McNaughton then described his perception of the video, which he recalled from memory after reviewing the video in preparation for his OIG interview:

That video shows an offender running through the Burger King parking lot, okay? And he is running at a good clip because police officers are running after him.

When he gets to what I believe is the intersection of 41st and Pulaski, he slows down and he almost—and he is walking now, and he almost comes to a complete stop, and in front of him, he is facing southbound, and in front of him, his view, are two police cars. One that just passed him and is parking at him, that’s Van Dyke and Walsh, and another vehicle that’s facing him . . . .

The point that really gets to me as far as a police officer, and it would for any police officer, is he stops, he hitches up his pants, and with his right hand presents the knife in a swinging motion, not trying to conceal it, throw it away, which where I come from in my personal knowledge of just being a human being, not alone a police officer, that’s an aggressive act.

It is one that I would consider to be an assailant at that point. If I am going to confront this guy is telling me, he is going to fight.

Also, I noticed that Walsh and Van Dyke’s vehicle have pulled several feet ahead, and now the offender, or excuse me, Mr. McDonald, is moving forward in such a fashion. He is kind of veering to the right, but he continues to move the knife.

He doesn’t conceal it or surrender it or discard it, and the officers are getting out of their vehicle. They are hand motioning, which would give me an indication that they are telling him, hey stop, get back, get down on the ground, normal police commands, drop the knife, and he continues his motions to where he gets close enough to Van Dyke where he makes a motion with what looks like his right hand that is obscured by the video itself when it appears that Van Dyke does fire upon him.

. . . .

If you look at the video, he had a clear path to run on the right-hand side, and knowing Laquan McDonald’s size and stature and age, I would venture to guess that he would make good his escape if he just put the knife down and took off.

He didn’t do those things.

McNaughton OIG Tr. 44:18-46:15, 54:6-13. When asked how many times he viewed the video, McNaughton stated: “It was several times, and I believe other people were, I want you to see it, too, maybe detectives, detective sergeants at that point. I think Lieutenant Wojcik saw it as well . . .” McNaughton OIG Tr. 52:12-17.

After viewing the video, Detective March gave McNaughton a tour of the scene, starting with the truck yard where Beat 815R first encountered McDonald. McNaughton stated:

I walk the distance to where I think McDonald has stopped to where he is hit, and the one thing you will notice, if you have done it yourself is that—people say he is walking away, that he is not approaching them. That’s just not the case.

If you are standing about 60 feet away from where the parked vehicle is from Walsh and Van Dyke, and they are pretty much a fixed object, and McDonald is about ten feet away when he is shot, he approached them. There is no other way to describe it.

If you define approach as come near to somebody, he came near to them. It wasn’t Van Dyke and Walsh that engaged him. It was McDonald that came up to them.

McNaughton OIG Tr. 50:1-16. McNaughton did not consult with the detectives about the direction of their investigation, stating, “I didn’t get the sense that I had to give anybody direction, nor was anyone asking me for direction that I recall.” McNaughton OIG Tr. 61:7-9.<sup>31</sup>

McNaughton then conducted interviews of the involved officers—he believed he only interviewed Van Dyke, Walsh, McElligott, and Gaffney. McNaughton spoke with each officer separately and “not within earshot of anyone.” McNaughton OIG Tr. 56:1-2. Consistent with the practice at the time, McNaughton did not take notes of the interviews. McNaughton said “none of them told me something that would contradict the facts that I knew at the time.” McNaughton OIG Tr. 56:5-7. McNaughton first found out Van Dyke shot McDonald 16 times during his interview with Van Dyke. McNaughton stated:

So at this point when I am talking to Van Dyke, it is the first time I actually learn—I asked him how many times did you shoot, and he told me it was, you know, 16, you know, he fired, and I kind of did like a, you know, a gafar

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<sup>31</sup> CPD’s Detective Division reported its investigation in the aftermath of the McDonald shooting under record number HX-475653, and classified most reports as an investigation into an aggravated assault in which McDonald was the offender. In a few reports, CPD classified the case as an investigation into a justifiable homicide of which McDonald was the victim. CPD created an additional record number and classified the case as a justifiable homicide. In CPD’s investigative reports, CPD personnel drew conclusions about the propriety and lawfulness of Van Dyke’s shooting of McDonald. This was in violation of CPD Detective Division Special Order (DDSO) 15-22, which requires that, in reporting on an incident which has been classified as a justifiable homicide, detectives “will not state that the use of deadly force was justified.” DDSO 15-22 took effect on January 1, 2015 and, according to materials OIG received from CPD, would have been in effect when the relevant reports in this case were drafted and issued. See Detective Division Special Order 15-22.

(phonetic), 16 times, why, you know. I could tell he was traumatized, and he said words to the effect “eliminate the threat,” and that’s what he is trained to do in the academy when they learn to shoot, and we saw subsequent shooting classes that they take.

I wasn’t aware that there was the curriculum in the academy; that they actually use the verbiage, “eliminate the threat.” I subsequently learned that they do use that verbiage. I was surprised.

McNaughton OIG Tr. 81:19-82:11. McNaughton reiterated that he was surprised to learn Van Dyke fired 16 shots.

After McNaughton spoke with the officers, he then walked approximately four IPRA personnel through the scene. McNaughton believed he showed them the dashcam video on the scene prior to leaving and said “they may have seen it several times.” McNaughton OIG Tr. 64:15-16. McNaughton stated that IPRA was at least “definitely” made aware of the video’s existence. McNaughton OIG Tr. 64:23.

At some point, McNaughton went to Dunkin’ Donuts to get a coffee, and he may have viewed the store’s security video at that time. McNaughton recalled the video was “very grainy,” and it was “hard to discern what was going on.” McNaughton OIG Tr. 91:18-19.

## 2. Area Central

McNaughton did not recall when he left the scene for Area Central, but said he was on the scene for several hours. One of the first things he did when he arrived at Area Central was to listen to the relevant 911 calls. McNaughton said that the call recordings gave him a “better feeling of—what the anxiety and what the officers are going to feel because of what was happening, and also the fact that the puncture, that the tire was punctured and it was announced that he [McDonald] had punctured the tire so people were aware that that had occurred as well.” McNaughton OIG Tr. 95:24-96:6. McNaughton then ensured that Van Dyke’s weapon was recovered and that IAD gave him a breathalyzer and urine analysis. McNaughton did not recall reviewing the 813R dashcam video at Area Central.

McNaughton then went to an office to review and approve the TRRs and OBRs. McNaughton said it is “common knowledge” that those forms have to be done after an incident like the McDonald shooting, and he did not have to specifically direct the officers to fill them out. McNaughton OIG Tr. 109:8. McNaughton stated, “I just expect it to get done and so we could move on and complete this phase of the investigation and get on with other things.” McNaughton OIG Tr. 109:18-20. The decision as to which officers must fill out TRRs and OBRs is generally a collective one between McNaughton, the investigators, and the detectives, but McNaughton did not recall any specific conversations on the topic. McNaughton believed he was on the opposite side of the room as Van Dyke, Walsh, and Gaffney when they filled out the TRRs and OBRs, and that they were working with their FOP representative and Sergeant Franko to fill out the forms. McNaughton later clarified that he was not sure if the FOP representative

and Franko were helping the officers fill out the forms, he just recalled they were talking on the other side of the room. When asked if he helped the officers fill out the forms, McNaughton stated: "I don't recall doing so. I may have. You know, I am not saying I am not, you know. . . . I don't remember direct involvement saying you check that box, you check this and this is this. I don't think that happened." McNaughton OIG Tr. 114:18-23.

McNaughton completed several other tasks that evening at Area Central, including: (1) reviewing the Major Incident Notification form at Area Central, which is a form that is posted to inform other command staff there was a police-involved shooting; (2) ensuring Van Dyke received his Employee Assistance Program forms; and (3) filling out the OCIC Activity Log listing his activities for the night.<sup>32</sup> McNaughton left Area Central around 7:00 a.m.

McNaughton reviewed the allegations against him as set out in the Notification of Allegations OIG served him on May 16, 2016. He responded, in relevant part, to the allegations as follows.

- *On or about October 21, 2014, you made a false statement in the Tactical Response Report Officer Jason Van Dyke completed concerning his encounter with McDonald, which includes an Event Number of 1429315878 and an R.D. Number of HX475653 (the Van Dyke TRR). Specifically, you stated that "Officer Van Dyke fired his weapon in fear of his life when the offender while armed with a knife continued to approach and refused all verbal direction."*

In response to this allegation, McNaughton stressed that this statement was "based on information available at this time" and was his "preliminary determination" as noted in the Van Dyke TRR. McNaughton OIG Tr. 121:6-7. McNaughton stated that "Officer Van Dyke fired his weapon in fear of his life" was a true statement, and that was what Van Dyke told him. McNaughton OIG Tr. 121:3-4. McNaughton continued: "[A] reasonable person would believe that they would be in fear of their life if they were confronted with the circumstances that Officer Van Dyke was confronted with." McNaughton OIG Tr. 121:22-122:1.

When asked if he saw McDonald walk away from the officers on the video, McNaughton stated he did not consider McDonald's veering to the right a "walking away" from the officers. He elaborated:

Do I consider him when he is going to the right walking away? . . . No, I don't, and I will tell you why. He has already taken aggressive stance. . . . At this point, as far as what I am looking at, is a person that is actually, because he is right-handed, could actually easily do a flanking maneuver.

If that was Mr. McDonald's only option to straddle that white line, okay, if that was his only option, that might have played in my thinking, but he had a whole

<sup>32</sup> The October 21, 2014 Major Incident Notification Detail, completed by Sergeant Daniel Gallagher, contains a narrative stating the following, in part: "Beat 845R exited their vehicle and ordered the offender to drop the knife. The offender refused all verbal commands and continued to approach the officers while still armed with his knife. Beat 845R fearing for his life discharged his weapon." It does not contain McNaughton's signature.

wide berth, 40 feet west of there that he could have clearly gone to. . . . [W]hat is just as concerning is the fact that he is not turning his head away from presenting the fact that he has got that weapon to the officers.

He is looking straight on at them, and he is understanding that a weapon is pointed at him at this time.

I can't characterize what Mr. McDonald knows or what he doesn't know, but I can tell you he is facing full frontal Van Dyke and Walsh, and they are facing each other.

McNaughton OIG Tr. 125:17-127:3. When asked if he saw Officers Van Dyke and Walsh step toward McDonald, McNaughton stated that it was "very hard to tell." McNaughton OIG Tr. 127:19. He continued: "I think at one point Van Dyke takes a step forward, and I think Walsh is moving around the car as far as their movements, but their movements don't appear to deviate too much from the vehicle." McNaughton OIG Tr. 127:19-23.

- *On or about October 21, 2014, you reviewed and approved the Van Dyke TRR, which TRR contained the following false statements: (1) under the category titled "Assailant: Assault," the box labeled "imminent threat of battery" was marked; (2) under the category titled "Assailant: Battery," the box labeled "attack with weapon" was marked; and (3) under the category titled "Assailant: Deadly Force," the box labeled "uses force likely to cause death or great bodily harm" was marked.*
- *On or about October 21, 2014, you reviewed and approved the Tactical Response Report Officer Joseph Walsh completed concerning his encounter with McDonald, which includes an Event Number of 1429315878 and an R.D. Number of HX475653 (the Walsh TRR), which TRR contained the following false statements: (1) under the category titled "Assailant: Assault," the box labeled "imminent threat of battery" was marked; (2) under the category titled "Assailant: Battery," the box labeled "attack with weapon" was marked; and (3) under the category titled "Assailant: Deadly Force," the box labeled "uses force likely to cause death or great bodily harm" was marked.*

In response to the allegation regarding Van Dyke's TRR, McNaughton first explained that he reviews and approves the TRRs for completeness.

McNaughton stated the first statement, in which the officers reported an "imminent threat of battery" under the category "Assailant: Assault," was true for the following reasons:

As far as him [McDonald] being armed, [Van Dyke's and Walsh's] observations that he was armed, his disregard for verbal direction, his clearly brandishing the weapon in a menacing manner in which he is moving his right hand back and forth, and his non-compliance or his what would be the normal actions of an offender who would try to run away. He didn't.

He stopped, hitched up his pants, and threw out the knife. He didn't surrender or comply with the verbal commands, and he did not conceal or discard the weapon.

So—and he continued to approach the Officers Van Dyke and Walsh. So for that reason, that is correct. That is a true statement.

McNaughton OIG Tr. 133:3-18.

McNaughton stated the second statement, in which the officers reported an “attack with weapon” under the heading “Assailant: Battery,” was true for the reasons above. When asked why it was true even though there was no battery, McNaughton stated:

You know, it is a fair question. I don't know. This is a computer-generated report and it limits your options, and this report is going to get cleaned up by the statements made by—the actual statements made by the officers to IPRA and to the detectives.

To my knowledge, he did attack with a weapon. Does it fit battery as we know battery in the State of Illinois is actually, you know, hurting someone? It does not.

Again, the intention was not to deceive or say something was false or to make it appear anything different.

I was of full knowledge as were the officers that this was on videotape, so I think it is a hairsplitting-type thing, and again, a lot of these boxes, and they say check all that apply, don't necessarily neatly fit into our descriptions of battery and simple battery or aggravated battery on state statutes.

McNaughton OIG Tr. 135:3-22. McNaughton acknowledged that it was not necessary to fill out any box in the section titled “Assailant: Battery,” and he could have left it blank. However, he believed the phrase “attack with weapon” was correct—McNaughton stated, “I think you could actually say the attack may begin right when he hitched up his pants and put out his right hand with the knife.” McNaughton OIG Tr. 137:22-24.

McNaughton stated the third statement, in which the officers marked “Assailant: Deadly Force,” and the box labeled “uses force likely to cause death or great bodily harm,” was true for the following reasons:

[McDonald] had a weapon. The force that he could have used could likely cause death or great bodily harm.

So if we go through the progression of what was going on, if he, in fact, made it across what was the distance between you and I, he could have obviously seriously injured the officer or the officers, and I did observe the knife, and it is

not a butter knife. This is a knife that would cut through you. It cut through a tire.

McNaughton OIG Tr. 134:4-14.

- *On or about October 21, 2014, you inputted in the Van Dyke TRR that “Officer Van Dyke fired his weapon in compliance with Department policy,” and checked the box marked “I have concluded that the member’s actions were in compliance with department procedures and directives” instead of the box marked “I have concluded that further investigation is required.”*

In response to this allegation, McNaughton stressed that his determination was preliminary, stating: “It was my preliminary finding. There is no standing, the OCIC has no standing on whether to make these conclusions. It has no weight. It has no standing for the officers involved, for the Department. It is not the official stance of the department.” McNaughton OIG Tr. 139:18-23. McNaughton stated that checking that box “means absolutely nothing.” McNaughton OIG Tr. 140:3-4. He also pointed out that he inserted Log Number 1072125 under the unchecked box, indicating that there would be an IPRA investigation. McNaughton stated: “This was the baby stages of this. This was by no means the end and that checking that box would not suggest that this was over.” McNaughton OIG Tr. 142:2-4.

- *On or about October 20, 2014 or October 21, 2014, you reviewed and approved the Officer’s Battery Report Officer Van Dyke completed concerning his encounter with McDonald, which includes an R.D. Number of HX475653 (the Van Dyke OBR), which OBR contained the following false statements: (1) under the category titled “Manner of Attack,” the box labeled “stabbed/cut (including actual attempt)” was marked; and (2) three officers were battered.*
- *On or about October 20, 2014 or October 21, 2014, you reviewed and approved the Officer’s Battery Report Officer Walsh completed concerning his encounter with McDonald, which includes an R.D. Number of HX475653 (the Walsh OBR), which OBR contained the following false statements: (1) under the category titled “Manner of Attack,” the box labeled “stabbed/cut (including actual attempt)” was marked; and (2) three officers were battered.*
- *On or about October 20 or October 21, 2014, you reviewed and approved the Officer’s Battery Report Officer Thomas Gaffney completed concerning his encounter with McDonald, which includes an R.D. Number of HX475653 (the Gaffney OBR), which OBR falsely stated that three officers were battered.*

McNaughton stated that “we had an incident with Officer Gaffney at 40th and Karlov, and then we had the Walsh and McDonald incident at 41st and Pulaski, and this was just a way of documenting these things.” McNaughton OIG Tr. 147:6-10. McNaughton said he did not intend to deceive—the OBRs are “gathered for statistical purposes” and “any type of clarification that

needed to be made would be made in the detective reports and with the Independent Police Review Authority.” McNaughton OIG Tr. 147:23-148:2.

- *On October 21, 2014, you provided a false statement to the Chicago Police Department’s Office of News Affairs when you stated McDonald “continued to approach” Officers Van Dyke and Walsh.*

In response to this allegation, McNaughton stated that he believed then and he believes now that the statement is true. He elaborated:

I believe that Officer Walsh and Van Dyke parked their vehicle ahead, about probably 60 to 70 feet ahead of Mr. McDonald.

Mr. McDonald in clear view at that point when the vehicle came to a stop hitched up his pants, opened up his knife. He was about 60 feet away, I believe, and that’s an approximate. He was 60 feet away at that point.

At the point when Officer Van Dyke fired his weapon striking Mr. McDonald, I believe they were about 10 to 11 feet away, best guess estimate, and I believed it that night and I believe it now, and if the definition of the word “approach” is to come nearer to, then I don’t think I was imprecise in that language.

I wish someone else could write statements. They could probably have crafted that better than I could, but it is there.

I do not believe it is a false statement in my heart of hearts.

McNaughton OIG Tr. 180:24-181:19.

- *You were incompetent in the performance of your duties in the ways enumerated in allegations 1 through 11.*

McNaughton noted that on the night of the incident he was fatigued, and this may have impacted his decision-making. He stressed, however, that he reported all of his actions to his superiors and, at no time, did anyone criticize his performance or competency. He emphasized that he never directed the officers to do anything he thought was deceitful or false, and while “reasonable people” may question his judgment, “they cannot question” his integrity. McNaughton further detailed his career with CPD and his dedication to the department. McNaughton OIG Tr. 189:24, 190:4.

### 3. October 22, 2014 Post-Shooting Briefing

McNaughton explained that after an officer-involved shooting, it is the responsibility of the OCIC to brief the Superintendent and other command staff in a post-shooting briefing. These are usually held in conjunction with the Executive Management Meetings. On October 22, 2014,

McNaughton presented a summation of the October 20, 2014 events for command staff, including Superintendent Garry McCarthy. McNaughton believed Area Central Commander Eugene Roy was also present. McNaughton could not independently recall who else was at the meeting, but said “plenty” of the other CPD Chiefs were in the room. McNaughton OIG Tr. 167:10. He showed the Greater Food Depository and 813R dashcam videos to the group. McNaughton said there was no discussion about whether the shooting was justified, and he did not offer an opinion. However, he acknowledged there was “[d]efinitely a concern” with the number of shots fired. McNaughton OIG Tr. 171:4. Several days later, McNaughton briefed Gulliford on the shooting because Gulliford was unable to attend the post-shooting briefing. McNaughton had no other involvement in the McDonald shooting.

## V. ANALYSIS

The OIG investigation established that McNaughton violated CPD Rules and Regulations when he approved false TRRs and false OBRs submitted by Van Dyke, Walsh, and Gaffney regarding the shooting. In addition, McNaughton falsely reported in Van Dyke’s TRR that McDonald “continued to approach” Van Dyke—then checked the box in Van Dyke’s TRR that states, “I have concluded that the member’s actions were in compliance with department procedures and directives,” and failed to mark the box stating that further investigation was required. Finally, McNaughton provided a false statement to CPD’s Office of News Affairs when he revised a CPD preliminary statement to say McDonald “continued to approach” Van Dyke and Walsh.

McNaughton’s creation and endorsement of those false statements all served to establish a false narrative that McDonald initiated an attack on Van Dyke and Walsh. Throughout McNaughton’s OIG interview, he attempted to explain his viewpoint—offering a clearly incorrect interpretation of the 813R dashcam video. McNaughton’s attempts to justify his actions in his OIG interview continued his endorsement of the materially false narrative, which cannot be excused.

McNaughton’s actions, individually and collectively, constitute violations of CPD Rules. His review and approval of TRRs and OBRs containing false statements made by him and the other officers constitutes a violation of Rule 14 (making a false report, written or oral). As a CPD supervisory member, McNaughton is responsible for the performance of Van Dyke, Walsh, and Gaffney, and is ultimately accountable for their “failure, misconduct or omission.” See Rules and Regulations of the Chicago Police Department, Section IV.B.8. CPD General Order G03-02-05 further affirms that “the findings of all Tactical Response Reports resulting from the use of force by any member” are the responsibility of the OCIC. McNaughton’s actions, including his false statement to CPD’s Office of News Affairs, also constitute violations of Rule 2 (engaging in any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department) and Rule 3 (failing to promote the Department’s efforts to implement its policy and accomplish its goals). A supervisory member who has made, reviewed, or approved false statements in an official investigation has irrevocably tainted not only his credibility, but also the credibility of CPD—and also fails to promote CPD’s goal of employing officers with personal integrity and professional devotion to law enforcement. By violating these Rules, McNaughton further violated Rule 11 (incompetency in the performance of a duty). Accordingly, OIG recommends that CPD discharge McNaughton and refer him for

placement on the ineligible for rehire list maintained by the Department of Human Resources.

### 1. McNaughton's Review and Approval of False Statements

Van Dyke and Walsh both asserted false narratives of the McDonald shooting in the official CPD reports they submitted regarding their encounter with McDonald. In their TRRs, Van Dyke and Walsh claimed that McDonald (1) used force likely to cause death or great bodily harm; (2) attacked them with a weapon; and (3) created an imminent threat of battery. In their OBRs, Van Dyke and Walsh claimed that the manner of attack was a stab or a cut (including actual attempt). Further, Van Dyke, Walsh, and Gaffney all claimed that three officers were battered.

As detailed in the Summary of Relevant Video Footage, Section IV.B.3., at no time while Van Dyke and Walsh were out of their vehicle and proximate to McDonald did McDonald swing his knife in a manner to cause death or great bodily harm to them. McNaughton acknowledged that he saw the video several times before reviewing and approving the TRRs and OBRs containing false statements. Yet, he continued to assert the statements were true even though they were contradicted by 813R's dashcam footage. Notably, the footage shows that McDonald was not "clearly brandishing the weapon in a menacing manner" as McNaughton asserted in his OIG interview. The moment McNaughton characterized as the trigger for the assault—when McDonald hitched up his pants and presented the knife—occurred when Van Dyke and Walsh were still in their moving vehicle with 822R situated between them and McDonald. In addition, McNaughton claimed that it was not Van Dyke or Walsh that engaged McDonald, but McDonald who came up to them. However, the video clearly shows that during the entire period Van Dyke and Walsh were outside their vehicle, McDonald walked in a direction that generally veered away from Van Dyke and Walsh, and in fact, only Van Dyke advanced in a manner that directly closed the distance when he took at least three steps toward McDonald.

McNaughton candidly acknowledged that his initial reaction to the video was one of concern, but then proceeded to piece together actions or the absence of actions by McDonald, which he asserts support a finding that McDonald attacked Van Dyke and Walsh with force likely to cause death or great bodily harm. However, McDonald's actions did not amount to an attack on Van Dyke and Walsh, and they did not amount to a battery, given that McDonald made no physical contact with any of the officers. McNaughton himself admitted that checking a box under "Assailant: Battery" was not required, and that there may not have been a battery "as we know battery in the State of Illinois." Despite clear evidence to the contrary, McNaughton reviewed and approved the three officers' TRRs and OBRs, which falsely stated that McDonald attacked the officers with deadly force, attempted to stab or cut the officers, and committed a battery. These false statements materially served to exaggerate the threat McDonald posed.

### 2. McNaughton's Conclusions in Van Dyke's TRR

McNaughton further violated CPD Rules when he typed the following in Van Dyke's TRR: "Based upon information available at the time of this report It [sic] is the preliminary determination of the undersigned that Officer Van Dyke fired his weapon in compliance with Department policy. Officer Van Dyke fired his weapon in fear of his life when the offender

while armed with a knife continued to approach and refused all verbal direction.” Although McNaughton’s determination was “preliminary” and “based upon information available at the time,” he had already viewed the 813R dashcam video several times when he wrote this conclusion. Even if McNaughton credited Van Dyke’s statement to him that Van Dyke feared for his life, McNaughton’s additional explanations for why Van Dyke’s belief was reasonable are refuted by the video evidence. Most notably, McNaughton included the false statement that McDonald “continued to approach” Van Dyke and Walsh. As stated above, McDonald walked in a direction that veered away from Van Dyke and Walsh the entire time the officers were outside their vehicle, and rather it was only Van Dyke who took steps that affirmatively closed the distance with McDonald.

Based on this false statement, that McDonald continued to approach the officers, McNaughton checked the box marked “I have concluded that the member’s actions were in compliance with department procedures and directives” instead of the box marked “I have concluded that further investigation is required” in Van Dyke’s TRR. McNaughton did this despite acknowledging his surprise to learn from Van Dyke that he shot McDonald 16 times, indicating that his “preliminary” determination would not be that Van Dyke’s actions were in compliance and that no further investigation was necessary.

McNaughton’s argument that this conclusion “has no weight” and “means absolutely nothing, and that the OCIC “has no standing on whether to make these conclusions,” appears to minimize the significance of the TRR as an official CPD report and, in this instance, a report of a very serious incident involving the use of deadly force. Equally significant is that McNaughton’s rationalization does not accord with the role of the OCIC as the senior member on scene responsible for relaying the preliminary findings of CPD’s own investigation to CPD command staff. McNaughton’s deflection is also countered by CPD Special Order S03-02-01 requiring the OCIC to “personally conduct an investigation into the circumstances surrounding the incident and make a preliminary determination as to whether the conduct of the member conformed to Department guidelines.” Regardless of what importance McNaughton might ascribe to the role and the conclusion, CPD created a provision in its Special Orders specifically describing the responsibility otherwise.

The importance of the OCIC is further reflected in McNaughton’s role as the point of contact for IPRA investigators responding to the scene of an officer-involved shooting to conduct an official investigation as required by law. See MCC § 2-57-040. The OCIC escorts responding IPRA personnel on a “walk-through” of the scene, and provides them with information that the OCIC has gathered or received to that point. McNaughton played precisely that role in connection with the McDonald shooting. In their preliminary memorandum containing the shooting details, IPRA investigators provided a summary of McNaughton’s statement to them. That summary states, in part: “Officers Walsh and Van Dyke exited their vehicle with their weapons drawn and ordered McDonald to drop his knife. McDonald did not drop his knife, and instead walked toward Officer Van Dyke *in an aggressive manner by waving the knife back and forth.*” (Emphasis added). McNaughton provided that characterization, which is clearly contradicted by the video that he had already viewed, in his official capacity as the OCIC. McNaughton’s

summary constituted CPD's first official account to the IPRA investigators who were conducting an ordinance-mandated investigation of an officer-involved shooting.

Accordingly, in the aggregate, McNaughton's rationalization must be deemed an attempt to minimize and, in some respects, deflect the significance of both the OCIC's responsibilities under the Special Order and his accountability for official forms that he is required to submit in response to police-involved shootings.

### 3. McNaughton's Statement to CPD's Office of News Affairs

On October 21, 2014, McNaughton provided a false statement to CPD's Office of News Affairs when he stated McDonald "continued to approach" Officers Van Dyke and Walsh. When confronted with this allegation, McNaughton reiterated his previous arguments for why he believed McDonald continued to approach. However, as stated above, McDonald was moving away from the officers during the entire period they were outside of their vehicle. By issuing a false statement to the Office of News Affairs, McNaughton directly contributed to the false narrative put forth by CPD in the immediate aftermath of the McDonald shooting, bringing discredit not only upon him, but on the entire Department.

## VI. RECOMMENDATION

McNaughton's actions raise significant concerns regarding his credibility and ability to perform his duties as a sworn officer and supervisory member. As a sworn officer and supervisory member, McNaughton's reports are relied upon in criminal legal proceedings and his credibility is therefore critical to his position. A CPD member who has made false statements in an official investigation has irrevocably tainted his credibility and has wholly disqualified himself from effectively executing core police functions. Based on this conduct he may be the subject of cross-examination in any contested proceedings in which he may appear as a witness, *see FED. R. EVID. 608(b)* ("Specific instances of conduct"), and his conduct and the findings resulting from this investigation would further qualify as impeachment material that should, in principle, be disclosed in any contested proceeding involving the official records or testimony McNaughton generates. *See Giglio v. United States*, 405 U.S. 150 (1972) (requiring disclosure in criminal case of information impeaching of government witness's credibility). Illinois courts have repeatedly noted that "'as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness'" and have found intentional false or misleading statements by police officers to be sufficient cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011) (quoting *Sindermann v. Civil Service Comm'n*, 275 Ill. App. 3d 917, 928 (2nd Dist. 1995)). OIG therefore recommends that CPD discharge McNaughton and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

## VII. CPD RULE VIOLATIONS

**Rule 2** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

**Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

**Rule 11** Incompetency or inefficiency in the performance of duty.

**Rule 14** Making a false report, written or oral.

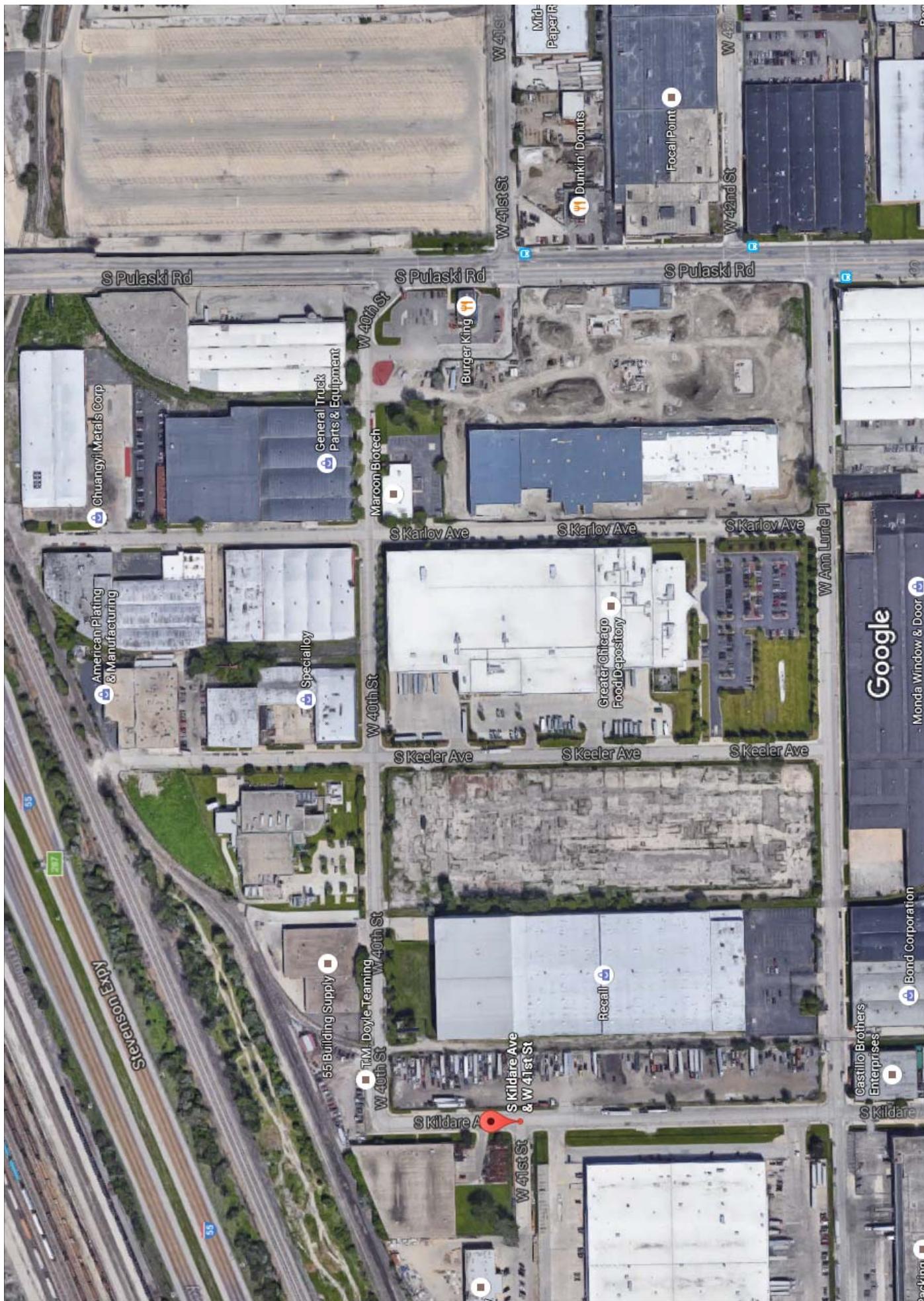
# **Appendix A**

S Kildare Ave & W 41st St - Google Maps

S Pulaski Rd

S Pulaski Rd

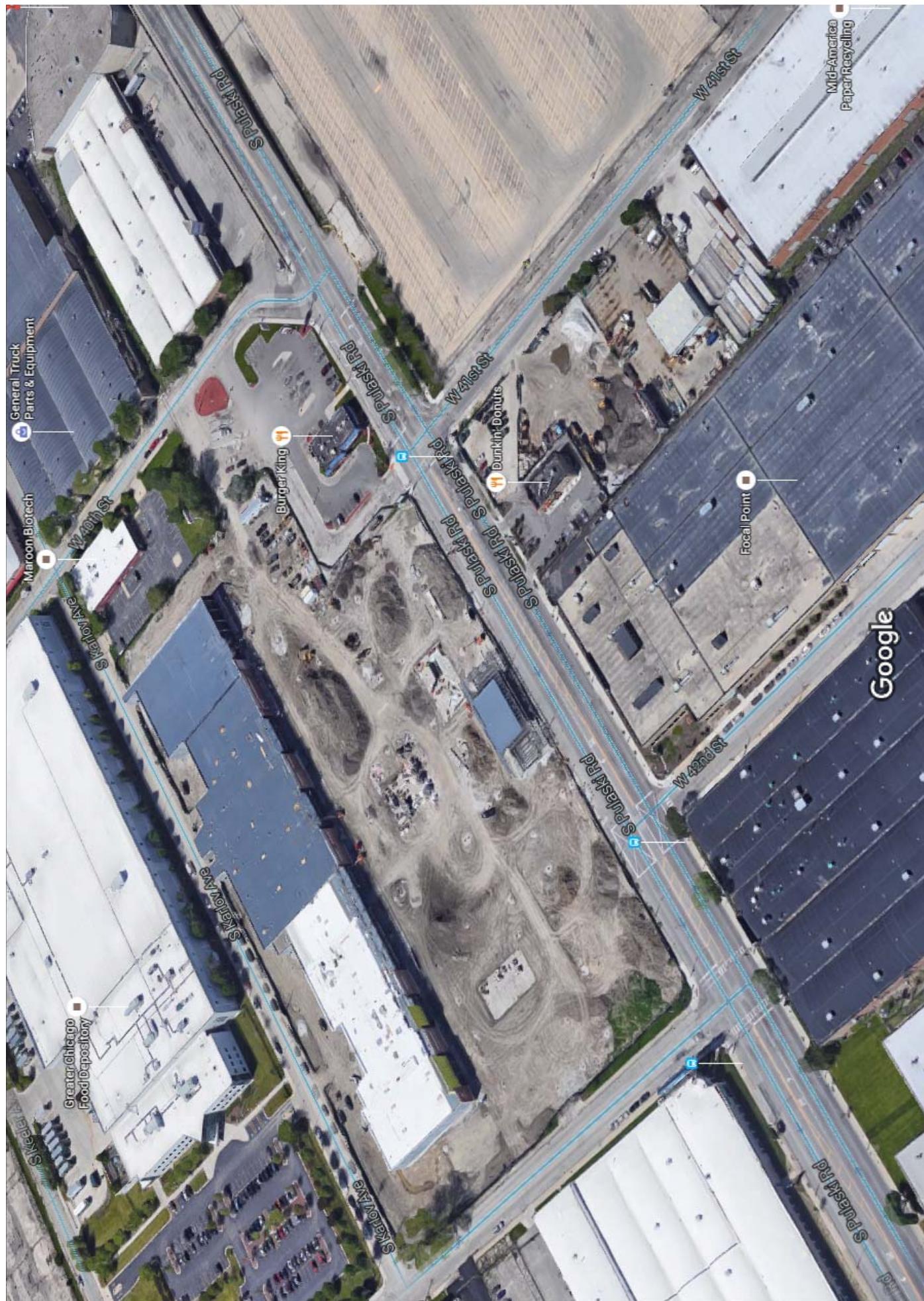
**S Pulaski Rd**



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<https://www.google.com/maps/place/S+Kil+dare+Ave+&+W+41st+St,+Chicago,+IL+60632/@41.8186918,-87.7273251,672m/data=!3m1!1e3!4m2!3m1!1s0x880e3229fb09b15!0x5d496ce5b4e391>



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